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**OFFICE OF PETITIONS**

In re Application of	:
Ward et al.	: DECISION GRANTING
Application No. 10/743,593	: PETITION
Filed: December 22, 2003	:
Attorney Docket No. 61633.001055	:

This is a decision on the petition filed April 13, 2004, requesting that the above-identified application be accorded a filing date of December 22, 2003. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience to applicants.

On December 22, 2003, applicants deposited the above-identified application. However, on April 2, 2004, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Nonprovisional Application," requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. Additionally, the Notice required a properly signed oath or declaration in compliance with 37 CFR 1.63. It is noted that the specification deposited on December 22, 2003, describes drawings containing Figures 1 and 2; however, it appears the United States Patent and Trademark Office (Office) did not receive any drawings on filing.

In response, applicants filed the present petition, a preliminary amendment, copies of Figures 1 and 2, an executed declaration, and paid the petition fee.

As stated in MPEP § 601.01(f), it is the practice of the Office to treat an application that contains at least one process or

method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors.

This application contains method claims. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Nonprovisional Application" mailed April 2, 2004, was sent in error and is hereby withdrawn. The application will be accorded a filing date of December 22, 2003.

Accordingly, the petition is granted.

The \$130.00 petition fee is unnecessary. However, the Office finance records indicate that applicants did not pay the requisite surcharge for the late filing of the declaration. Accordingly, the \$130.00 petition fee will be applied towards the payment of the outstanding \$130.00 surcharge.

**The Office of Initial Patent Examination is directed to accord the application a filing date of December 22, 2003, with "0" sheets of drawings.**

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

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